

# HOUSE BILL No. 1291

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 33-39-1-6.

**Synopsis:** Appointment of special prosecutors. Requires a court to appoint a special prosecutor when a previously appointed special prosecutor is unable to continue representing the state.

**Effective:** July 1, 2007.

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## Van Haaften

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January 11, 2007, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## HOUSE BILL No. 1291

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 33-39-1-6, AS AMENDED BY P.L.222-2005,  
2 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2007]: Sec. 6. (a) Special prosecutors may be appointed under  
4 this section or in accordance with IC 4-2-7-7.  
5 (b) A circuit or superior court judge:  
6 (1) shall appoint a special prosecutor if:  
7 (A) any person other than the prosecuting attorney or the  
8 prosecuting attorney's deputy files a verified petition  
9 requesting the appointment of a special prosecutor; and  
10 (B) the prosecuting attorney agrees that a special prosecutor is  
11 needed;  
12 (2) may appoint a special prosecutor if:  
13 (A) a person files a verified petition requesting the  
14 appointment of a special prosecutor; and  
15 (B) the court, after:  
16 (i) notice is given to the prosecuting attorney; and  
17 (ii) an evidentiary hearing is conducted at which the

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prosecuting attorney is given an opportunity to be heard;  
finds by clear and convincing evidence that the appointment  
is necessary to avoid an actual conflict of interest or there is  
probable cause to believe that the prosecutor has committed a  
crime;

(3) may appoint a special prosecutor if:

(A) the prosecuting attorney files a petition requesting the  
court to appoint a special prosecutor; and

(B) the court finds that the appointment is necessary to avoid  
the appearance of impropriety; ~~and~~

(4) may appoint a special prosecutor if:

(A) an elected public official, who is a defendant in a criminal  
proceeding, files a verified petition requesting a special  
prosecutor within ten (10) days after the date of the initial  
hearing; and

(B) the court finds that the appointment of a special prosecutor  
is in the best interests of justice; ~~and~~

**(5) shall appoint a special prosecutor:**

**(A) if a previously appointed special prosecutor files a  
motion for leave to withdraw as special prosecutor, if any  
interested party files a verified petition requesting the  
appointment of a new special prosecutor, or upon the  
court's own motion;**

**(B) if the court appointed special prosecutor has become  
unable to represent the state;**

**(C) if a need exists for a special prosecutor to continue  
representing the state; and**

**(D) if the facts that form the basis for the initial  
appointment of a special prosecutor still exist.**

(c) Each person appointed to serve as a special prosecutor:

(1) must consent to the appointment; and

(2) must be:

(A) the prosecuting attorney or a deputy prosecuting attorney  
in a county other than the county in which the person is to  
serve as special prosecutor; or

(B) except as provided in subsection (d), a senior prosecuting  
attorney.

(d) A senior prosecuting attorney may be appointed in the county in  
which the senior prosecuting attorney previously served if the court  
finds that an appointment under this subsection would not create the  
appearance of impropriety.

(e) A person appointed to serve as a special prosecutor has the same

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1 powers as the prosecuting attorney of the county. However, the  
 2 appointing judge shall limit scope of the special prosecutor's duties to  
 3 include only the investigation or prosecution of a particular case or  
 4 particular grand jury investigation.

5 (f) The court shall establish the length of the special prosecutor's  
 6 term. If the target of an investigation by the special prosecutor is a  
 7 public servant (as defined in IC 35-41-1-24), the court shall order the  
 8 special prosecutor to file a report of the investigation with the court at  
 9 the conclusion of the investigation. The report is a public record.

10 (g) If the special prosecutor is not regularly employed as a full-time  
 11 prosecuting attorney or full-time deputy prosecuting attorney, the  
 12 compensation for the special prosecutor's services:

13 (1) shall be paid to the special prosecutor from the unappropriated  
 14 funds of the appointing county; and

15 (2) may not exceed:

16 (A) a per diem equal to the regular salary of a full-time  
 17 prosecuting attorney of the appointing circuit; and

18 (B) travel expenses and reasonable accommodation expenses  
 19 actually incurred.

20 (h) If the special prosecutor is regularly employed as a full-time  
 21 prosecuting attorney or deputy prosecuting attorney, the compensation  
 22 for the special prosecutor's services:

23 (1) shall be paid out of the appointing county's unappropriated  
 24 funds to the treasurer of the county in which the special  
 25 prosecutor regularly serves; and

26 (2) must include a per diem equal to the regular salary of a  
 27 full-time prosecuting attorney of the appointing circuit, travel  
 28 expenses, and reasonable accommodation expenses actually  
 29 incurred.

30 (i) The combination of:

31 (1) the compensation paid to a senior prosecuting attorney under  
 32 this chapter; and

33 (2) retirement benefits that the person appointed as a senior  
 34 prosecuting attorney is receiving or entitled to receive;

35 may not exceed the minimum compensation to which a full-time  
 36 prosecuting attorney is entitled under IC 33-39-6-5.

37 (j) A senior prosecuting attorney appointed under this chapter may  
 38 not be compensated as senior prosecuting attorney for more than one  
 39 hundred (100) calendar days in total during a calendar year.

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